

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.1.2016

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

CMA.Nos.2718 to 2731 of 2015

1.Vidyasagar
2.Indumathi

... Appellants in all appeals

-Versus-

Bimalkumar Jain ... Respondent in CMA.Nos.2718 &2719 of 2015
Sushil Kumar Jain
rep. by his power agent
Ram Kumar Jain ... Respondent in CMA.Nos.2720,2721 of 2015
Dilip Kumar Jain ... Respondent in CMA.Nos.2722,2723 of 2015
Anitha Jain ... Respondent in CMA.Nos.2724,2725 of 2015
Sandeep Kumar Jain ... Respondent in CMA.Nos.2726,2727 of 2015
Lalith Kumar Jain ... Respondent in CMA.Nos.2728,2729 of 2015
Sunitha Jain ... Respondent in CMA.Nos.2730,2731 of 2015

These civil Miscellaneous appeals are filed under Order XLIII of Rule 1(r) of Code of Civil Procedure Code against the order dated 07.02.2015 in I.A.Nos.297,298 of 2014 in O.S.No.71 of 2014 ; I.A.Nos.299,300 of 2014 in O.S.No.72 of 2014 I.A.Nos.301,302 of 2014 in O.S.No.73 of 2014 ; I.A.Nos.305,205 of 2014 in O.S.No.74 of 2014 I.A.Nos.307,306 of 2014 in O.S.No.75 of 2014 respectively, I.A.Nos.308,309 of 2014 in O.S.No.76 of 2014 and I.A.Nos.310,311 of 2014 in O.S.No.77 of 2014 respectively passed by the learned Additional District Judge, Kancheepuram District at Chengalpattu.

For Appellants in all the Petitions : Mr.M.Radhakrishnan

For Respondents in all the petitions:M/s.K.Bijai Sundar
Dr.R.Sumitha Sundar

C O M M O N J U D G E M E N T

Aggrieved over the impugned decreetal orders passed in I.A.Nos.297,298 of 2014 in O.S.No.71 of 2014; I.A.Nos.299,300 of 2014 in O.S.No.72 of 2014; I.A.Nos.301,302 of 2014 in O.S.No.73 of 2014 ; I.A.Nos.305,205 of 2014 in O.S.No.74 of 2014 ; I.A.Nos.307,306 of 2014 in O.S.No.75 of 2014; I.A.Nos.308,309 of 2014 in O.S.No.76 of 2014 and I.A.Nos.310,311 of 2014 in O.S.No.77 of 2014 on the file of the Additional District Judge, Kancheepuram District at Chengalpattu, the above appeals have been preferred by the defendants/appellants.

2. Mr.M.Radhakrishnan, learned counsel appearing for the defendants/appellants, assailing the findings reached by the learned Trial Court in granting temporary injunction till the disposal of the suits restraining the defendants/appellants herein in any way alienating and encumbering the suit property and further restraining them from putting up further construction in the suit property till the disposal of the suit, contended that the suits were filed by the plaintiffs/respondents seeking declaration and recovery of possession in respect of the total extent of the suit property derived only by means of a deed of family arrangement dated 9.9.1989. Therefore, when it is a clear case of the plaintiffs/respondents that the suits are based on the document, namely, the deed of family arrangement dated 9.9.1989, in the absence of registration, there is no cause of action for the respondents/plaintiffs to file the suits.

3. However, when I.A.Nos.205,297 to 302, 305 to 311 of 2014 have been moved seeking temporary injunction to restrain the defendants/appellants from alienating and encumbering the suit property and also restraining them in any way putting up further construction in the suit property, detailed counter affidavits have been filed by the defendants/appellants herein on the specific ground that the plaintiffs/respondents have no prima facie case nor balance of convenience in their favour, when the suits have been filed based on an unregistered deed dated 9.9.1989.

4. Adding further, he relied on two judgements of the Division Bench of this Court contending that the unregistered deed of family arrangement is inadmissible in evidence. Therefore, he submits that the above suits have no triable issue and ought to have been dismissed. Whereas, the learned Trial Court has refused to consider the arguments supported by the said two judgements of the Division Bench of this Court in A.C. Lakshmipathy and another vs. A.M.Chakrapani Reddiar and others reported in (2001) 1 MLJ 1 and R.Deivanai Ammal (Died) and another vs. G.Meenakshi Ammal and another dated 13.7.2004 and held that since the learned counsel for the defendants/appellants is attacking the validity of family arrangement based on the Stamp Act, it needs not to be looked into at present.

5. Adding further, the learned counsel appearing for the defendants/appellants would submit that the Division Bench of this Court in A.C. Lakshmipathy and another vs. A.M.Chakrapani Reddiar and others reported in (2001) 1 MLJ 1 held that if the family arrangement is reduced into writing creating an assignment giving the rights or title, appropriate stamp duty should be paid and it should be duly registered as per the Indian Stamp Act and Indian Registration Act. Whereas, the learned Trial Court, without even considering the above rulings, has erroneously come forward to grant temporary injunction restraining the defendants/appellants herein from alienating and encumbering the suit property. Besides, the defendants/appellants are also restrained from putting up any further construction in the suit property till the disposal of the suit, hence, the findings given by the Trial Court for granting temporary injunction are totally contrary to the settled legal position of law and the impugned decreetal orders are liable to be set aside by allowing of the appeals, 'he pleaded'.

6. Continuing his argument he submits that the basic premise required to be followed by the Trial Court for granting temporary injunction is only on the basis of making out a prima facie case. Whereas, in the present case, accepting the unregistered deed of family arrangements dated 9.9.1989, the interim injunction were granted. The plaintiffs have not produced any other better documents showing the title to the suit properties, therefore, in all fairness, the decision reached by the Trial Court that the prima facie case has been made out merely relying on the communication dated 30.5.1997 issued by the Tahsildar, Tambaram, who has no authority to issue such communication, is liable to be set aside.

7. Placing reliance and emphasizing on the rulings laid down by the judgement of the Division Bench of this Court in A.C. Lakshmipathy and another vs. A.M.Chakrapani Reddiar and others reported in (2001) 1 MLJ 1, the learned counsel contended that any document in question without being paid any stamp duty and without registration, cannot be looked into for any purpose. Therefore, the impugned decreetal orders deserve no merits and they are liable to be set aside. In support of his contention he also reiterated the ratio laid down in an unreported judgement in R.Deivanai Ammal (Died) and another vs. G.Meenakshi Ammal and another dated 13.7.2004. He would further submit that without any supporting document, it is not known how the learned Trial Court has given more importance to the averments made by the plaintiffs/respondents herein in respect of title and ownership of the suit property covered in S.No.71 forming part of B Schedule property.

8. Opposing the above contentions, Mr.K.Bijai Sundar, learned counsel appearing for the caveators/respondents/plaintiffs would submit that the suit has been filed on the ground that the plaintiffs are absolute and exclusive owners of the properties more

fully described in B- Schedule property. He further submits that the respondents/plaintiffs came to know that the properties are gramamatham and patta is to be issued in favour of the persons who are in possession and enjoyment thereon. Therefore, an application was given on 27.12.2012 to the Special Tahsildhar, Land Assessment Office, Tambaram for issuance of patta in respect of the properties more fully described in the B Schedule. The Tahsildhar informed the plaintiffs/respondents that the patta to the B-schedule properties is in the name of the defendants/appellants. Subsequently, after enquiry with the revenue authority, it was found out that one T.Umarani, D/o.Thirumalai Naidu claiming to be the absolute owner of 68 cents forming part of the property more fully described in B Schedule, sold the same to the first defendant through sale deed dated 2.7.2004 without any right, title or interest whatsoever to convey the said land.

9. After filing the suit, apprehending alienation of the property, interlocutory applications were also filed seeking interim relief not to alienate the property and also not to put up any further construction till the disposal of the suit. In support of the prayer, the plaintiffs/respondents have produced not only parent documents but also the deed of family arrangement deed dated 9.9.1989, showing that the suit properties have been allotted to the plaintiffs. In addition to the deed of family arrangements, several other antecedent documents showing the title of the suit properties in favour of the plaintiffs/respondents herein have also been filed.

10. The learned Trial Court, after considering the prima facie case made out by the plaintiffs/respondents herein and also considering not only the family arrangement but also old title documents prior to the family arrangement, has come to the conclusion that the plaintiffs/respondents have established a prima facie case for grant of interim injunction to avoid any illegality or hardship during the pendency of the suit. When all the matters are ready for trial and the issues have already been framed, no interference is called for, he submitted.

11. Further he would submit that if any interference is shown by this court, taking advantage of such interference, miscreants of the village may create interests that would lead to multiplicity of proceedings. Therefore, the temporary injunction granted by the learned Trial Court needs not to be interfered in the interests of both the parties, he pleaded. In support of his submission, taking reliance on the judgement of this Court in S.D. Doraisamy vs. T.Dayalan and 8 others reported in 2002 (2) CTC 462, he contended that when it is well settled legal position of law, where prima facie case is made out that the plaintiffs are found to be in possession of the suit property on the date of filing of the suit, normally, an order granting interim injunction has to be made. Following the same principle, the learned Trial Court accepting the case of plaintiffs/respondents that prima facie case has been made

out, in order to maintain status quo between the parties, has rightly granted interim injunction. Therefore, when the learned Trial Court has proceeded on the basis of the rulings laid down in S.D. Doraisamy vs. T.Dayalan and 8 others reported in 2002 (2) CTC 462 reported supra, no interference is called for, he said.

12. Reply to the contention made by the learned counsel appearing for the appellants to brush aside the genuineness of the unregistered deed of family arrangement dated 9.9.1989 taking support of the judgement of the Apex Court in the case of Kale and others vs. Deputy reported in 1976 SC 807, learned counsel appearing for the respondents would submit that the parties to the settlement deed have got sufficient antecedent title and as such the family settlement cannot be considered to be invalid.

13. Adding further he would submit that it is well settled legal position, for the purpose of avoiding multiplicity of proceedings, the interim protection has to be made to the suit properties from alienating or damaging by the other party in the suit. On this premise, the learned Trial Court after considering the fact that the plaintiffs have not only filed the document of family arrangement but also filed title documents prior to the said family arrangements, has come forward to grant the temporary injunction. Therefore, the defendants/appellants are always entitled to canvass their case before the Trial Court. On this premise, he prayed for dismissal of the appeals.

14. All though it has been claimed by the plaintiffs/respondents that they are absolute and exclusive owners of the suit properties more fully described in the B Schedule of the plaint, apprehending that defendants 3 and 4 are seriously attempting to alienate B-schedule property and creating third party interest, they have moved the interlocutory applications under Order 39 Rule 1 and 2 read with Section 151 C.P.C. for granting temporary injunction to restrain the defendants from in any way alienating and encumbering the suit property till the disposal of the suits. Besides, the Learned Trial Court has also considered the serious objections raised by the defendants/appellants.

15. Therefore, in my considered opinion, without going into the merits of the case, the learned Trial Court has come to the conclusion after keeping in mind that the plaintiffs/respondents have established prima facie case with reference to the family arrangement deed dated 9.9.1989 and also antecedent title documents and granted temporary injunction. A perusal of the impugned orders would also show that the plaintiffs have filed original enjoyment certificate issued by the Tahsildhar, Tambaram Taluk on 30.5.1997 with respect to the suit properties.

16. Moreover, the learned Trial Court while considering the old documents Exs.P2, P3 and P4, which are all of the year 1986 and 1989 respectively, showing very title over the B-schedule property, found that the Exs.R-12 and R-13 filed by the defendants/appellants herein, are not prior to the documents filed by the plaintiffs/respondents herein and has come to the conclusion that a prima facie case has been made out for grant of interim injunction. Therefore, when the learned Trial Court in its discretion, in order to avoid any hardship to both the parties, has passed the temporary injunction till the disposal of the suit making it clear that the challenge by the defendants on the validity of the family arrangement based on the Stamp Act, will be gone into at the time of trial, such a finding prima facie in my considered opinion, cannot be found fault with. Therefore, all the appeals fail and they are dismissed. Consequently the connected M.P.Nos.1 of 2015 in all the appeals are also dismissed. No costs. Since the learned counsel on both sides have expressed their willingness for speedy disposal of the matters by giving cooperation, this court directs the Trial Court to take up the matters expeditiously and dispose of them on merits and in accordance with law.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

vk

To

The Additional District Judge,
Kancheepuram District at Chengalpattu.

1 cc to Mr.M. Radhakrishnan, Advocate, Sr. 4370

1 cc to Mr.K. Bijai Sundar, Advocate, Sr. 2845

C.M.A.Nos.2718 to 2731 of 2015

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